IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 17557 of 2007(M)

OS.60/2004 OF SUB COURT, QUILANDY
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PETITIONER:

ARAVINDAN,
RAROTH VEEDU,
PANANGAD POST, VIA BALUSSERY,
KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:
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1. PUTHUKKUDY CHEKKINI,
PANANGADU AMSOM, NIRMALLUR DESOM,
KOYILANDY TALUK.

2. PALAKKEEL PENNUTTY, DO. DO.

3. PALAKKEEL BALAN, DO. DO.

R1 TO R3 BY ADVS. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 17557/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAN AND REPORT IN OS NO. 60/04 BEFORE THE SUB COURT, QUILANDY DT. 22/11/2006.

EXT.P2. COPY OF THE OBJECTION IN OS NO. 60/04 BEFORE THE SUB COURT, QUILANDY IN OS NO. 60/04 BEFORE THE SUB COURT QUILANDY DT. 6/12/2005.

EXT.P3. COPY OF THE WORK MEMO SUBMITTED BEFORE THE COMMISSIONER DT. 17/10/2006.

EXT.P4. COPY OF THE WORK MEMO IN OS NO. 60/04 BEFORE THE SUB COURT, QUILANDY DT. 20/5/06.

EXT.P5. COPY OF THE ORDER DT. IN IA NO. 2160/2006 IN OS NO. 60/04 BEFORE THE SUB COURT, QUILANDY DT. 5/3/07.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE JUDGMENT DT. 7/1/04 IN OS NO. 234/02 OF THE FILE OF THE MUNSIFF COURT, QUILANDY.

EXT.R1B. COPY OF THE ORDER DT. 28/5/03 IN IA NO. 108/03 IN OS NO. 11/03 BEFORE the SUB COURT, QUILANDY

EXT.R1C. COPY OF THE JUDGMENT DT. 20/07/03 IN OS NO. 11/03 BEFORE THE SUB COURT, QUILANDY.

EXT.R1D. COPY OF THE ORDER DT. 22/10/03 IN CMA NO. 86/03 ON THE FILE OF THE DIST. COURT, KOZHIKODE.

EXT.R1E. COPY OF THE JUDGMENT DT. 9/10/06 IN WPC NO. 13063/06 ON THE FILE OF THIS COURT.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.17557 OF 2007

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Dated this the 5th day of December 2007

JUDGMENT

This writ petition is filed seeking to set aside the order passed by the Sub Court, Koyilandy in I.A.No.2160 of 2006 in O.S.No.60 of 2004. The petition is filed by the plaintiff in the suit for setting aside the Commissioner's plan and report and his main grievance appears to be that though he has filed work memo before the Commissioner, the Commissioner has not adverted to it and therefore it has prejudiced him and he prays for setting aside the Commissioner's plan and report. It is objected to by the other side.

2. The suit is one for permanent injunction with respect to A and B Schedule properties. It is the case of the plaintiff that B schedule is the pathway and A schedule is the property and that A and B schedule properties belong to the plaintiff and he is the owner in possession of A and B schedule properties. In order to entitle the plaintiff to get the relief, it will be sufficient that the plaintiff is able to establish the right over A and B schedule properties and his possession. Only when some confusion is

created in the mind of the court with reference to the measurements depending upon the documents of the defendants some clarification may be necessary at that stage. It has not arisen and the Commissioner has not been examined and therefore, I do not find any purpose at this stage to set aside the Commissioner's plan and report, as found by the court below. The court below has made it clear that "if it is found by the Court at a later stage that inspection of the property by the Commissioner is again required, that can be considered at the time of the trial". So the court below has left open that option to be considered at a later stage. I make it clear that the dismissal of the application for setting aside the Commissioner's plan and report shall not be taken as a fact that the Commissioner's report has become final in the matter. Both sides are permitted to adduce evidence in support of their respective contentions and after appreciating and analysing the same the court is of the view that some more materials are necessary to resolve the controversy between the parties, the court is at liberty to call for further particulars from the Commissioner. Needless to say that both sides are at liberty to examine the Commissioner and witnesses in support of their

contentions.

W.P.C. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-